

WCA Rule Advisory Committee 1-31-08 Meeting

Draft Noticing Section

8420.02300500 ~~REPLACEMENT PLAN DETERMINATIONS~~ LOCAL GOVERNMENT UNIT NOTICING REQUIREMENTS.

Subpart 1. Determination of Complete Application. If, within 15 business days of receipt of an application for approval of a replacement plan, exemption, no-loss, boundary or type determination, or banking plan, the local government unit finds that an application is incomplete, the local government unit shall notify the applicant and list in writing what items or information is missing. Part 8420.0400, Application Requirements, must be the basis for determining a complete application. The local government unit may cite seasonal constraints as a basis for an incomplete application.

~~Subpart 2. Notice of Application. A landowner intending to drain, excavate, or fill a wetland who does not qualify for an exemption or no-loss determination shall obtain approval of a replacement plan from the local government unit before beginning draining or filling. A person who does not do so is subject to the enforcement provisions in this chapter and Minnesota Statutes, section 103G.2372.~~

The section above will not be deleted, but rather is proposed to be relocated to 8420.0800, the new Replacement Plan Application section, per the new rule order.

~~—Within ten days of receipt of an application for an activity affecting less than 10,000 square feet of wetland, the local government unit must send a summary of the application, which includes information to identify the applicant and the location and scope of the project, to members of the technical evaluation panel, the commissioner of natural resources, and individual members of the public who have requested a copy. The project notification must state when the comment period ends.~~

The deletion of the above paragraph and changes made below are intended to simplify administration of the program by providing a single notification standard that is applicable to all applications.

Within ~~ten~~ fifteen-working business days of receipt of a complete application, for approval of a replacement plan for an activity affecting 10,000 square feet or more of total wetland impacts, the local government unit must send a copy of the application and ~~an invitation to submit comments a~~ notice of application on a form provided by the board to members of the technical evaluation panel; the watershed district or water management organization if there is one; the commissioner of natural resources and individual members of the public who request a copy. The notice must identify the decision or decisions requested, where comments are to be sent, and date when the comment period ends. Individual members of the public who request a copy must be sent a summary of the application that includes information to identify the applicant and the location and scope of the project. The comment period must be at least 15 business days or more from the mailing date of the notice of application form. ~~The project notification must state when the comment period ends.~~

For modifications to applications that have not been approved, but have been previously noticed, the local government unit should provide adequate review time for those required to receive notice.

The changes above are intended to make WCA consistent with MS 15.99. In 2003 the time allowed to determine if an application was complete or not was extended from 10 to 15 days. WCA was not updated at that time and it is now proposed that it be made consistent. Previously, a minimum 15 day comment period was required for replacement plans only and all other decision requests did not require noticing. Language has been added to clarify the process and manner in which applicants are notified of an incomplete application. In addition, a provision is added that allows LGU's to consider an application as incomplete if it requires field verification outside the growing season.

~~An application for approval of a replacement plan includes a revised application for replacement plan approval and an application for a~~ Revisions or modifications ~~to an approved application must be noticed according to this subpart if any of the following apply:~~

A. the impacted wetland area ~~to be drained or filled~~ is:

- 1) more than ten percent larger than the area to be drained or filled under the original replacement plan; or
- 2) a different type;
- 3) part of a different wetland; or
- 4) the wetland area to be drained or filled under the revised replacement plan is located more than 500 feet from the approved wetland impact area to be drained or filled under the original replacement plan.

B. the replacement wetland is:

- 1) a different type;
- 2) more than 500 feet from the approved replacement location; or
- 3) a different type of replacement credit.

Notice of revision or modification to an approved application is only required to include a summary of the proposed changes.

The changes above are proposed to further clarify when re-notification is required in relation to changes in previously-noticed applications and decisions. Previous language only referred to replacement plan applications and did not address some instances where changes could significantly alter how the proposed project satisfies WCA requirements. The addition of this clarifying language provides both the LGU and applicant more specific thresholds which if exceeded require another formal review. Also, this change is proposed because of the new wetland replacement ratio calculation requirements. Changing the wetland type or basin impacted could alter the replacement ratio and thus require modification of the proposed mitigation. Requiring this type of replacement plan change to be noticed will eliminate a potential loophole in which the applicant could initially avoid a high quality wetland and then later impact it without the TEP knowing it. A provision was added to clarify that the modified replacement plan must be re-noticed with another comment period.

Subp. 23. Notice of Decision. ~~The local government unit decision shall be based on the replacement standards in parts 8420.0500 to 8420.0630, and on the technical evaluation panel's~~

~~determination, if there is one, concerning the wetland function and resulting public values, location, size, and type of the wetland being altered. The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99. The local government unit shall consider and include the technical evaluation panel's recommendation, if there is one, to approve, modify, or reject the proposed replacement plan.~~ The local government unit decision must be sent mailed to the landowner within ten working business days of the decision. A summary of the local government unit decision must be sent within ten working business days of the decision to those required to receive notice of the application in a form provided by the Board.

The changes above are proposed to clarify the decision noticing requirement and standardize the LGU decision process for all types of decisions (replacement plans, exemptions, no-losses, wetland boundary/type). Language has been added to allow the Board to establish minimum information requirements as they relate to decision notices sent by out by LGUs. This will reduce the number of decision notices with insufficient information and will benefit the applicant and other members of the TEP by requiring the LGU to be specific as to what decision was actually made. References to the content and nature of the actual decision are proposed to be moved to another section as they are not applicable to the notice itself which is the focus of this section.

~~For wetland replacement plans involving more than one local government unit, approval of all local government units involved or as specified in part 8420.0200 shall constitute final approval of the replacement plan and is required before the project may proceed. The local government unit with jurisdiction for the impact site must approve all components of the replacement plan, following the procedures in parts 8420.0500 to 8420.0630. The local government unit with jurisdiction for the replacement site shall limit the review to evaluation of the replacement site as in parts 8420.0540 to 8420.0630 and make a decision accordingly.~~

~~As part of the approval of the replacement plan, the local government unit with jurisdiction for the replacement site assumes responsibility for ensuring compliance with monitoring provisions according to parts 8420.0600 to 8420.0630. The local government unit with jurisdiction for the replacement site may enter into joint powers agreements with a local government unit with jurisdiction for the impact site, assess fees, or develop other procedures considered necessary to facilitate the process.~~

The above two paragraphs are proposed to be moved to the LGU Duties section of the rules as they do not relate to noticing.

STAT AUTH: MS s 14.06; 103B.101; 103B.3355; 103G.2242

HIST: 18 SR 274; 22 SR 1877; 27 SR 135

8420.0235 [Repealed, 27 SR 135]

In summary, this new section combines portions of 8420.0210, 8420.0220, 8420.0225, and 8420.0230 as they relate to noticing applications and decisions. The purpose of this new section is to provide one section in the rule that can be referenced in regard to noticing requirements of LGUs. This new section is further justified by the fact that many of the procedure-related changes and clarifications that are being proposed lead to standardized procedures regardless of the application or decision type.